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Before the
Federal Communications Commission
Washington, D.C. 20554

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In the Matters of)	
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Administration of the)	CC Docket No. 92-237 ✓
North American Numbering Plan)	
)	
Toll Free Service Access Codes)	CC Docket No. 95-155
)	

THIRD REPORT AND ORDER and THIRD REPORT AND ORDER

Adopted: October 9, 1997

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By the Commission:

TABLE OF CONTENTS

	<u>Paragraph No.</u>
I. Introduction	1
II. Background	2
A. Procedural History	2
B. The North American Numbering Council	9
C. Summary of Tasks Given to the NANC	14
III. NANP Administrator	16
A. Background	16
B. NANC Recommendation for NANPA and Billing and Collection Agent ..	17
1. Process Followed by NANC in Selecting and Recommending new NANPA and Billing and Collection Agent	17
a. Requirements Document	17
b. Description of Evaluation Process	18
(1) NANPA	22
(2) Billing and Collection Agent	32
c. Positions of the Parties	36
(1) Comments on NANPA	36
(2) Comments on NANPA Billing and Collection Agent ..	56
d. Discussion	59

(1) NANPA	59
(2) Billing and Collection Agent	68
2. Neutrality	69
a. Description of Neutrality Definition	69
b. Discussion	70
(1) NANP Administrator	70
(2) Billing and Collection Agent	82
C. Process for Governance	92
1. Description of Recommended Rules	92
2. Discussion	95
IV. TOLL FREE NUMBER ADMINISTRATION	99
A. Background	99
B. Positions of the Parties	101
C. Discussion	109
V. CONCLUSION	110
VI. PROCEDURAL MATTERS	111
A. Final Regulatory Flexibility Analysis	111
VII. ORDERING CLAUSES	127

APPENDICES

Appendix A: Final Rules

Appendix B: Members of NANC

Appendix C: NANC Recommendation

I. INTRODUCTION

1. In a *Report and Order* released on July 13, 1995, the Federal Communications Commission (Commission) established the North American Numbering Council (NANC)¹ pursuant to the Federal Advisory Committee Act (FACA).² The *NANP Order* directed the NANC to recommend to the Commission and to other member countries of the North American Numbering Plan (NANP) a neutral entity to serve as NANP Administrator (NANPA) and a

¹ Administration of the North American Numbering Plan. *Report and Order*, CC Docket No. 92-237, 11 FCC Rcd 2588, 2590 (1995) (*NANP Order*).

² 5 U.S.C., App. 2.

mechanism for recovering the costs of NANP administration in the United States. The membership of NANC, which includes thirty-two voting members and four special non-voting members, was selected to represent all segments of the telecommunications industry with interests in numbering administration. The Commission's charge that the NANC recommend an impartial NANP administrator is consistent with Congress' directive in section 251(e)(1) of the Communications Act of 1934, as amended by the Telecommunications Act of 1996,³ that the Commission designate an impartial numbering administrator to make telecommunications numbering available on an equitable basis. In this order, we affirm the NANC's selection of Lockheed Martin IMS (Lockheed) as the NANPA and of the National Exchange Carriers Association (NECA) as the NANPA Billing and Collection Agent (B&C Agent), subject to the conditions outlined below and to the rules proposed by NANC to govern the activities of the NANPA and the B&C Agent. We also, in CC Docket No. 95-155, conclude that toll free numbering administration, as currently structured, violates section 251(e)(1) of the Communications Act, as amended, and direct the NANC to recommend what entity should administer the toll free database.

II. BACKGROUND

A. Procedural History

2. The North American Numbering Plan (NANP) is the basic numbering scheme permitting interoperable telecommunications service within the United States, Canada, Bermuda, and most of the Caribbean.⁴ The NANP began when, in the early 1940s, American Telephone and Telegraph (AT&T) began to develop a numbering plan to ensure that the expansion of toll (or "long distance") dialing would be guided by "principles in harmony with the ultimate incorporation of all networks into an integrated network of nation-wide scope."⁵ Under the plan, the United States and Canada were divided into eighty-three "zones," each of them identified by three digits. Within each zone, a central office was represented by another three-digit code.⁶ The original "zones" are now referred to as Numbering Plan Areas (NPAs), and the three digits representing those areas are referred to either as NPA codes or area codes. The three digits representing central offices are called central office (CO) codes or NXX codes.⁷

³ Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

⁴ *NANP Order* at 2588. The NANP meets the telecommunications numbering needs of: Anguilla; Antigua and Barbuda; Commonwealth of the Bahamas; Barbados; Bermuda; British Virgin Islands; Canada; Cayman Islands; Dominican Republic; Grenada; Jamaica; Montserrat; Saint Kitts and Nevis; Saint Lucia; Saint Vincent and the Grenadines; Trinidad and Tobago; Turks and Caicos; and the United States (including Puerto Rico, Guam, the Commonwealth of Northern Mariana Islands, and the U.S. Virgin Islands). *Id.* at n.1.

⁵ *Id.* at 2593, citing Bell Laboratories Record, F.F. Shipley, Nation-Wide Dialing, p. 368, October 1945.

⁶ *Id.* at 2593, citing Bell Laboratories Record, Nation-Wide System for Toll Line Dialing, p. 29, January 1949.

⁷ *Id.* at 2593. Telephone numbers within the NANP may be represented as NPA-NNX-XXXX. NPAs have historically been of the format: N 0/1 X, and CO codes in the form NNX. Thus, a telephone number representation based entirely on the digits that may be in each position was given by: N 0/1 X-NNX-XXXX, where N may be any

3. AT&T administered the NANP for over forty years. In 1984, at divestiture, the Plan of Reorganization established Bell Communications Research (Bellcore) as the NANP Administrator (NANPA).⁸ Bellcore currently administers the NANP for all member countries. Although its primary function is to assign numbers, pursuant to industry guidelines, to parties requesting them, it also maintains numbering databases, initiates number conservation and reclamation efforts, advises industry and regulatory agencies on numbering issues and serves as a subject matter expert on numbering issues (including providing consultation to the Commission and representing the United States in various international numbering committees).⁹ Bellcore administers most numbering resources in the United States.¹⁰ Additionally, within the United States, eleven regional CO code administrators handle CO code assignments. The dominant local exchange carrier (LEC) in a particular region serves as the CO code administrator.¹¹ Currently, Bellcore Client Companies¹² fund the operation of Bellcore as the NANPA.¹³

4. As more new entrants entered the telecommunications market, particularly wireless entrants in direct competition with the wireline industry, the wireline industry's continued administration of the NANP became unacceptable.¹⁴ In 1994 we issued a *Notice of Proposed Rulemaking* examining what entities might perform the policy-making, dispute resolution and

number from 2 to 9, 0/1 is either 0 or 1, and X may be any number from 0 to 9. In January 1995, because there were no more available NPA codes of the N 0/1 format, the industry introduced interchangeable NPAs (INPAs) of the format NXX. CO codes are typically of the form NNX. When, however, in a particular NPA, all NNX possibilities for CO codes have been used, CO codes of the form NXX may be used to avoid the need for assigning another NPA for the area. Allowing CO codes to be of the form NXX helps to delay depletion of the NPA codes. Thus, the current telephone number format within the NANP is given by: NPA-NXX-XXXX. *Id.* at 2593-94.

⁸ *Id.* at 2594. Bellcore was established on January 1, 1984, under the Plan of Reorganization as part of the divestiture of AT&T. See Implementation of Section 273 of the Communications Act of 1934, as amended by the Telecommunications Act of 1996, CC Docket No. 96-254, *Notice of Proposed Rulemaking*, FCC 96-472, para. 35, (rel. Dec. 11, 1996) (*BOC Manufacturing NPRM*). Since its creation, Bellcore has been owned and controlled jointly by the Regional Holding Companies (RHCs). *Id.* The RHCs, however, have recently announced their agreement to sell Bellcore to Science Applications International Corporation (SAIC), a large defense contractor. *Id.*

⁹ *Id.*

¹⁰ *Id.* Bellcore administers NPA codes, N11 codes for national use, CICs, 500-NXX codes, 900-NXX codes, 456-NXX codes, 800-NXX codes (Caribbean only), Service Access Codes (N00), 809-NXX codes, 555 line numbers, Vertical Service Codes, SS7 network codes (under contract with Committee T1), MBG identifiers (under contract with Committee T1) and ANI II digits.

¹¹ *Id.* The CO code administrators within the United States are: Alascom; Ameritech; Bell Atlantic; BellSouth; Cincinnati Bell; GTE (for 813 area code); GTE (for 808 area code); NYNEX; Southern New England Telephone; SBC; and U S WEST. *Id.* at n.20.

¹² Ameritech; Bell Atlantic; BellSouth; NYNEX; SBC; and U S WEST.

¹³ *NANP Order* at 2594.

¹⁴ *Id.* at 2595.

applications processing functions associated with NANP administration.¹⁵ In the resulting *NANP Order*, we stated that adequate numbering resources are essential to provide consumers efficient access to new telecommunications services and technologies, and to support growth of an economy dependent upon those services and technologies.¹⁶ We stated:

The NANP erects a framework for assigning the telephone numbers upon which those services depend and for permitting international calls between the member countries to be completed without the need to dial international access codes and international country codes. The advantages of widespread access to such a seamless network are considerable. These numbers are a public resource, and are not the property of the carriers. [Footnote omitted]. Access to numbering resources is critical to entities desiring to participate in the telecommunications industry. Numbers are the means by which businesses and consumers gain access to, and reap the benefits of, the public switched telephone network. These benefits cannot be fully realized, however, unless numbering resources of the NANP are administered in a fair and efficient manner that makes them available to all parties desiring to provide telecommunications services. To maximize these benefits required continued international coordination of number administration among member countries of the NANP.¹⁷

5. The *NANP Order* resolved several issues related to the future administration of the NANP. In it, we stated the broad policy objectives that should and could be achieved through judicious administration of the NANP. They are as follows:

- Administration of the plan must seek to facilitate entry into the communications marketplace by making numbering resources available on an efficient, timely basis to communications services providers.
- Administration of the NANP should not unduly favor or disadvantage any particular industry segment or group of consumers.
- Administration of the NANP should not unduly favor one technology over another. The NANP should be largely technology neutral.
- Administration of the NANP and the dialing plan should give consumers easy access to the public switched telephone network.

¹⁵ Administration of the North American Numbering Plan, *Notice of Proposed Rulemaking*, CC Docket No. 92-237, 9 FCC Rcd 2068 (1994) (*NANP NPRM*).

¹⁶ *NANP Order* at 2591, citing the *NANP NPRM*.

¹⁷ *Id.*

- Administration of the NANP should ensure that the interests of all NANP member countries are addressed fairly and efficiently, and foster continued integration of the NANP across NANP member countries.
- United States numbering policy should be developed in a manner that fosters international numbering consistency and interoperability.¹⁸

6. We concluded that an effective structure for number administration in the United States would be one in which an industry policy board or oversight committee would develop policy and, at least initially, would resolve disputes. The NANPA would maintain administrative number databases and process applications for numbers, while reporting to the oversight committee instead of directly to regulatory bodies.¹⁹ The committee would report to the Commission and other NANP member country regulatory bodies, which would resolve disputes the board could not and set broad numbering objectives and policy.²⁰ We concluded that this model would serve the public interest by permitting fair and efficient administration of numbering resources, fostering an integrated approach to numbering administration across NANP member countries, and enabling the Commission and regulatory bodies of other nations to ensure that domestic numbering administration is effective, while leveraging the expertise and innovation of the industry.²¹ In the *NANP Order*, we committed to creating the North American Numbering Council (NANC) as the oversight committee. One of the tasks we directed the NANC to undertake was to recommend to the Commission an independent, non-government entity that is not closely associated with any particular industry segment to serve as the new NANPA.

7. In February 1996, Congress passed the Telecommunications Act of 1996 (1996 Act) amending the Communications Act of 1934 (the Act).²² Section 251(e)(1) of the Act requires the Commission to create or designate one or more impartial entities to administer telecommunications numbering and to make such numbers available on an equitable basis.²³ Section 251(e)(1) further states that the Commission shall have exclusive jurisdiction over those portions of the North American Numbering Plan that pertain to the United States, but that nothing in section 251(e)(1) shall preclude the Commission from delegating to State commissions or other entities all or any portion of such jurisdiction.²⁴

¹⁸ *NANP Order* at 2595-96.

¹⁹ *Id.* at 2601.

²⁰ *Id.*

²¹ *Id.*

²² Telecommunications Act of 1996, Pub. L. No 104-104, 110 Stat. 56 (1996).

²³ 47 U.S.C. § 251(e)(1).

²⁴ *Id.*

8. In implementing the 1996 Act, we released the *Local Competition Second Report and Order* on August 8, 1996.²⁵ In that order, we concluded that the actions taken in the *NANP Order* satisfied the section 251(e)(1) requirement that we create or designate an impartial numbering administrator.²⁶ We noted that we had required that there be a new, impartial number administrator and established the model for how that administrator would be chosen.²⁷ We had thus taken "action necessary to establish regulations" leading to the designation of an impartial number administrator as required by section 251(e)(1).²⁸

B. The North American Numbering Council

9. In the *NANP Order*, we agreed that this Commission must actively oversee administration of limited numbering resources, and agreed with parties expressing concerns regarding the industry's ability to administer number resources fairly and in a competitively neutral manner.²⁹ We concluded that we can monitor the administrator through participation in and direction of an advisory board (i.e. the NANC).³⁰ We stated that we believed that the NANPA could function most effectively by reporting to a single entity with broad representation from industry, consumers, state regulators and other NANP member countries.³¹

10. Noting that the United States is not the only country relying upon the NANP for its numbering needs or having policy concerns affecting the NANP's future administration, we encouraged other member countries to support the model for numbering administration that we adopted.³² We recognized that each NANP member is a sovereign country with responsibility for ensuring the efficient development of its telephone network, and observed that commenters from those countries had indicated support for an industry-led NANP administration.³³ We stated our belief that the approach we adopted in the *NANP Order* would benefit not only the United States but all NANP members, because the NANC would provide a forum in which

²⁵ Implementation of the Local Competition Provisions of the Telecommunications Act of 1996, *Second Report and Order and Memorandum Opinion and Order*, CC Docket No. 96-98, 11 FCC Rcd 19392 (1996) (*Local Competition Second Report and Order*). Rev'd in part *People of the State of California v. Federal Communications Commission*, No. 96-3519 and consolidated cases, 1997 WL 476529 (8th Cir. Aug. 22, 1997).

²⁶ *Local Competition Second Report and Order* at 19510.

²⁷ *Id.*

²⁸ *Id.*

²⁹ *NANP Order* at 2602.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

³³ *Id.*

telecommunications service providers from all NANP countries can raise concerns affecting common numbering resources.³⁴

11. In the *NANP Order*, we concluded that the numbering administration model we had adopted called for the creation of the NANC, which would provide recommendations to the Commission on numbering issues and be the initial site for resolution of disputes relating to administration of the NANP. We stated that, although industry fora had achieved success in resolving numbering issues, industry mechanisms for resolving issues may not always lead to timely resolution or may not afford all parties reasonable access to dispute resolution mechanisms.³⁵ We noted that the strength of industry fora to resolve issues is the wealth of technical and operational expertise they bring to bear on complex numbering issues. We stated, however, that as competition in telecommunications grows and new competitors join incumbents in industry fora, it would become more difficult for those fora, operating by consensus, to resolve numbering issues.³⁶ Further, we concluded that the Commission needs consensus advice from industry on numbering issues to enable it to make timely, informed decisions on numbering policy issues.³⁷

12. We concluded that the NANC would be subject to the Federal Advisory Committee Act because it is an advisory committee established to obtain advice or recommendations for a federal agency.³⁸ Creation of the NANC was determined to be essential and in the public interest because of the importance of numbers to providers of telecommunications services, and the need for neutral administration of numbers to ensure their availability.³⁹ We stated that NANC meetings would be open to the public, that detailed meeting minutes would be prepared, and that a designated federal official would be present at all meetings.⁴⁰ We further noted that an advisory committee established under FACA must have a balanced membership in terms of the points of view represented.⁴¹ Thus, we stated that council membership would be drawn from all segments of the industry, including local exchange carriers (LECs), interexchange carriers (IXCs), wireless providers, and competitive access providers. The membership also would include other interested parties from the United States and other NANP member countries, including the National

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.* at 2608-09.

³⁷ *Id.* at 2609.

³⁸ *Id.*, citing FACA, 5 U.S.C., App. § 4(a) and § 3 (2)(C). The NANC charter states that NANC would exist as a federal advisory committee for a two year period, prior to the close of which the Commission could seek renewal of the charter.

³⁹ *Id.* at 2610.

⁴⁰ *Id.*, citing FACA at § 10.

⁴¹ *Id.* at 2609, citing FACA at § 2 (b)(2).

Association of Regulatory Utility Commissions (NARUC), telecommunications users, and other consumer groups.⁴²

13. The NANC had its first meeting on October 1, 1996 and continues to meet on a regular basis. The NANC established several working groups, including: (1) a steering group; (2) a NANPA group; and (3) a local number portability administration (LNPA) group. Participation in the working groups is open to all interested parties. All working groups report directly to the NANC. The NANPA working group has task forces to address issues pertaining to cost recovery for NANPA, NANPA transition planning, and CO code administration transition planning. The LNPA group has task forces to address issues pertaining to LNPA architecture planning and LNPA technical and operational requirements.

C. Summary of Tasks Given to the NANC

14. In the *NANP Order*, we outlined several specific tasks for the NANC, whose mission, as a federal advisory body, is to provide the Commission with advice and recommendations reached through consensus to foster efficient and impartial number administration as telecommunications competition emerges.⁴³ One of its first tasks was to recommend to the Commission an independent, non-governmental entity that is not closely associated with any particular industry segment to serve as the new NANPA.⁴⁴ We also asked the NANC to provide recommendations on: (1) the transition plan for CO code administration to be transferred from the LECs to the new NANPA; (2) the measures that should be taken to conserve numbering resources; (3) the number resources, beyond those currently administered by the NANPA, that the new NANPA should administer; and (4) whether the NANC should continue as a federal advisory committee after 2 years.⁴⁵ We also directed the NANC to perform a host of tasks to implement local number portability.⁴⁶

⁴² *Id.* See Appendix B for a list of all NANC members.

⁴³ *NANP Order* at 2609. The NANC also provides recommendations to the telecommunications regulatory authorities of other NANP member countries.

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ Telephone Number Portability, *First Report and Order and Further Notice of Proposed Rulemaking*, CC Docket No. 95-116, 11 FCC Rcd 8352 (1996). We directed the NANC to recommend to the Commission no later than May 1, 1997 one or more entities to serve as local number portability administrators (LNPAs). Further, it was to recommend to the Commission technical and operational requirements developed through coordination with the industry to govern the national number portability database system. On May 1, 1997, the NANC issued recommendations regarding the implementation of local number portability. The Common Carrier Bureau sought comment on those recommendations on May 2, 1997. Telephone Number Portability, *Public Notice*, CC Docket No. 95-116, DA-97-916 (May 2, 1996). Comments were received on June 2, 1997, and reply comments were received on June 17, 1997. On August 18, 1997 we released an order adopting the NANC's recommendations with some modifications. Telephone Number Portability, *Second Report and Order*, CC Docket No. 95-116, FCC 97-289 (rel. Aug. 18, 1997).

15. We stated that the NANC should also serve as a forum for initial dispute resolution.⁴⁷ We asked the NANC to develop recommendations defining how NANPA costs should be recovered, including the specific mechanisms for collecting these funds and disbursing them to the administrator.⁴⁸ Regarding the issue of number conservation, we requested NANC to investigate ways to ensure efficient number use.⁴⁹ We also sought the NANC's recommendation on additional numbering resources for which the NANPA should be responsible.⁵⁰

III. NANP Administrator

A. Background

16. On May 15, 1997, the Commission received the NANC's recommendation related to the selection of the NANPA and the B&C Agent.⁵¹ To complete the tasks the Commission had set for it pertaining to the selection of the NANPA, NANC formed the NANPA Working Group (Working Group), and in its recommendation describes the process by which this Working Group developed a Requirements Document and an evaluation process to assess candidates for the new NANPA and the B&C Agent.⁵² The Working Group reported directly to the NANC, and its membership was open to all interested parties.

B. NANC Recommendations for NANPA and Billing and Collection Agent

1. Process Followed by NANC in Selecting and Recommending new NANPA and Billing and Collection Agent

a. The Requirements Document

17. In its recommendation, NANC explained that it received proposals in response to a "Requirements Document" that set forth the qualities and attributes of the NANPA and the

⁴⁷ *Id.* at 2604.

⁴⁸ *Id.* at 2628.

⁴⁹ *Id.*

⁵⁰ *Id.* at 2615.

⁵¹ Recommendation of the North American Numbering Council, North American Numbering Plan Administrator and Billing and Collection Agent (May 15, 1997) (NANC Recommendation).

⁵² NANC Recommendation at 4. To facilitate public accessibility to the Requirements Document, the Commission released the Requirements Document on February 20, 1997. See NEWSReport No. CC 97-8, NANC Seeks Proposals from Entities Interested in Serving as North American Numbering Plan Administrator (Feb. 20, 1997). Responses to the Requirements Document were due on April 3, 1997.

B&C Agent and the functions that each would be expected to perform.⁵³ As set out in section 1.9.2 of the Requirements Document, the criteria for evaluating the proposals were: (1) compliance with the Requirements Document; (2) experience; (3) completeness of the proposal; (4) communications effectiveness; and (5) innovation. The Requirements Document provided that the new NANPA would serve for an initial period of five years.⁵⁴ The Requirements Document specifically stated that respondents should quote a firm, fixed price for performing the NANPA and B&C functions.⁵⁵

b. Description of Evaluation Process.

18. In its recommendation, NANC included information describing the process followed by the NANPA Working Group and its Evaluation Team in preparing the Working Group's report for the NANC. Potential respondents to the Requirements Document were allowed to submit written questions to clarify their understanding of the Requirements Document, and received written responses to their questions from the NANPA Working Group. On March 26, 1997, the NANPA Working Group met with the potential respondents to review any additional questions. Participants included Bellcore, the Center for Communications Management Information (CCMI), Lockheed, Mitretek Systems (Mitretek) and NECA. Proposals were submitted by those entities on April 3, 1997. The NANC Working Group Evaluation Team, which had been approved by the NANC, held a meeting April 7-11, 1997. Each team member reviewed each of the proposals to determine if the proposal complied with the schedule for assuming NANPA responsibilities ordered by the Commission. No proposals were eliminated for non-compliance. The team members then assessed the proposals, using a "compliance matrix" to determine whether the respondents met the criteria outlined in the Requirements Document. When compliance was confirmed, the team members evaluated the detailed information of each proposal. For each response evaluated, team members completed an evaluation table, and assigned a numerical score for each evaluation criteria. A candidate's total score was obtained by multiplying the evaluation grade by the respective weighting factor for that particular requirement. The Evaluation Team noted that the quantitative analysis was intended to aid the evaluation process but was not the only assessment tool used. Pricing information was taken into account, and was given a weighting of 50 percent, while all other evaluation information combined also had a weighting of 50 percent. Finally, the Evaluation Team compiled a list of questions for respondents that had not been eliminated.

19. The Evaluation Team distributed specific questions seeking clarification or additional information on functional and pricing issues pertaining to the individual proposals to respondents on April 17, 1997. Respondents submitted their answers to those questions on

⁵³ Requirements Document at 1-2. In preparing the Requirements Document, the NANC and the NANPA Working Group developed the possibility of a B&C Agent that would be separate from the NANPA. They did not determine that such an arrangement was essential, however, and they structured the Requirements Document to allow interested parties to submit proposals to be the NANPA, the B&C Agent, or both.

⁵⁴ Requirements Document, §1.3.

⁵⁵ Requirements Document, §10.

April 24, 1997. The Evaluation Team held another meeting on April 30-May 1, 1997, in which it developed additional questions for each of the respondents in preparation for meetings with the respondents individually on May 2, 1997. On May 2, respondents gave presentations to the Evaluation Team and had the opportunity to answer the questions developed by the Evaluation Team. The Evaluation Team held a final four-day meeting from May 5 to May 8, 1997. Members reevaluated the respondents based on the presentations and on the written answers to the Evaluation Team's questions. The Evaluation Team broke into subgroups and listed the strengths and weaknesses of the candidates for the new NANPA, identifying the major attributes of each candidate. First, second, and third choices for the new NANPA were identified, and a final evaluation was conducted to identify the top two choices. A similar process was followed to identify the top candidates for the B&C Agent. The Evaluation Team developed a report to the NANC that presented the Team's recommendations for the new NANPA and the B&C Agent. In its report, the Evaluation Team identified two respondents, Mitretek and Lockheed, as the preferred choices for the new NANPA and NECA as the primary choice for the B&C Agent. Although the team could not achieve consensus on a single respondent for the NANPA, a majority preferred Mitretek.⁵⁶

20. On May 14, 1997, the full NANC held a closed meeting to review the Evaluation Team's report and to determine the NANC's recommendations to the Commission for the NANPA and the B&C Agent.⁵⁷ On May 15, 1997, the NANC recommended Lockheed as the preferred choice to serve as the new NANPA and Mitretek as the alternate.⁵⁸ Although NANC did not reach consensus on a preferred respondent for the new NANPA, a majority (13 members) voted for Lockheed while 11 members voted for Mitretek.⁵⁹ The NANC also recommended that the new NANPA comply with specific requirements concerning pricing and intellectual property rights, which were included in the proposed rules that NANC also recommended to the Commission.⁶⁰ Those requirements are as follows:

- (1) The new NANPA shall perform the numbering administration functions currently performed by Bellcore, and the CO code administration functions currently performed by the eleven CO code administrators, at the price agreed to at the time of its selection. The new NANPA may request from NANC, with approval by the FCC, an adjustment in this price if the actual number of CO Code assignments made per year, the number of NPAs requiring relief per year or the

⁵⁶ See NANPA Working Group Evaluation Team Report to the North American Numbering Council on a North American Numbering Plan Administrator and Billing and Collection Agent (Evaluation Team Report) at 20-23.

⁵⁷ Administration of the North American Numbering Plan, *Public Notice*, CC Docket No. 92-237 (April 28, 1997).

⁵⁸ NANC Recommendation at 3.

⁵⁹ *Id.*

⁶⁰ *Id.*

number of NPA relief meetings per NPA exceeds 120% of the NANPA's stated assumptions for the above tasks at the time of its selection.

(2) The new NANPA must make available any and all intellectual property and associated hardware resulting from its activities as numbering administrator including, but not limited to, systems and the data contained therein, software, interface specifications and supporting documentation and make such property available to whomever NANC directs free of charge. The new NANPA must specify any intellectual property it proposes to exclude from the foregoing based on the existence of such property prior to its selection as NANPA.⁶¹

21. Subject to the condition that the Commission order NECA to create an independent board of directors exclusively for the B&C Agent, the NANC recommended that NECA be the B&C Agent.⁶²

(1) NANPA

22. The NANC determined that the proposals of both Lockheed and Mitretek were fully compliant with the NANC Requirements Document.⁶³ Specifically, both organizations demonstrated compliance with the neutrality criteria set forth in section 1.2 of the Requirements Document.⁶⁴ According to the NANC, both candidates displayed understanding and appreciation of the numerous complexities associated with administering the NANP.⁶⁵ In the NANC's view, both also differentiated themselves from the other respondents by offering "innovative ideas and forward-looking state-of-the-art administration systems and tools that the NANC considered essential for effective administration in accordance with the Requirements Document."⁶⁶

23. NANC stated that the advantages of the Lockheed proposal are: (1) its cost, which is half of that of the Mitretek proposal; (2) its reflection of Lockheed's experience with numbering issues relative to local number portability and the 800/888 Help Desk;⁶⁷ and (3) its

⁶¹ *Id.* at 17.

⁶² *Id.* at 4.

⁶³ *Id.* at 5.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

⁶⁷ On May 1, 1997, the NANC recommended that Lockheed be selected as the administrator for local number portability in four of seven regions nationwide. Telephone Number Portability, *Public Notice*, DA 97-916 (May 2, 1997). On August 18, 1997, we released an order adopting the NANC's recommendations with some modifications. Telephone Number Portability, *Second Report and Order*, FCC 97-289 (rel. Aug. 18, 1997). Lockheed also in the past has contracted with Database Services Management, Inc., the administrator of the toll free number database, to

potential to achieve synergy from the future consolidation of numbering administration systems and processes (e.g., number pooling).⁶⁸ Some NANC members expressed concerns, however, regarding Lockheed's ability to perform the NPA relief and CO code administration functions effectively because of its proposed staff size.⁶⁹ Because Lockheed at the time of its response to the NANC performed 800/888 Help Desk functions, and performs local number portability administration center (LNP NPAC) functions for the industry, the NANC also expressed concern regarding a lack of vendor diversity in numbering administration generally.⁷⁰

24. Lockheed's original proposal stated that, as the NANPA, it would centralize all national number relief and administration tasks at a single office on the east coast.⁷¹ The NANC noted that Lockheed has labor and capital resources to manage fluctuations in workload or funding. Regarding the organizational structure, the NANC stated that Lockheed's centralized NPA relief planning and CO code administration could simplify new entrant and national carrier access to the NANPA and lead to consistency in assignment procedures.⁷² The NANC was concerned, however, that Lockheed's centralization in Tarrytown, NY could hamper Lockheed's

provide user support for the SMS/800 Help Desk. The SMS 800 Management Team, however, has notified Responsible Organizations that it has chosen a new provider, Sykes Enterprises, Inc., to operate the SMS 800 Help Desk.

⁶⁸ NANC Recommendation at 5. Number pooling is being examined by industry groups, at the NANC's direction, as a tool for slowing depletion of CO codes and of using numbers more efficiently. Number pooling has been described by the industry as follows:

Pooling of numbers in a local number portability environment is a number administration and assignment process which allocates numbering resources to a shared reservoir associated with a designated geographic area. Initially, the designated geographic area is limited to an existing rate center within a geographic NPA. The numbering resources in the shared reservoir would be available, potentially, in blocks of numbers or on an individual basis, for assignment to competing service providers participating in local number portability for the purpose of providing service to customers in that area.

Industry Numbering Committee, Status Report on Issue 105, Number Pooling, to the North American Numbering Council (June 10, 1997).

⁶⁹ NANC Recommendation at 5.

⁷⁰ *Id.*

⁷¹ See CaPUC comments at 4. See also Letter from Jeffrey Ganek, Lockheed Martin IMS, to William F. Caton dated August 14, 1997 (Lockheed August 14 ex parte) at 2.

⁷² NANC Recommendation at 6.

ability to obtain personnel to perform NPA relief and CO code functions,⁷³ and could lead to a lack of local expertise in specific geographic regions.⁷⁴

25. In NANC's view, Lockheed demonstrated an understanding of the workload of NANPA, had experience in operating the 800/888 Help Desk, and had experience with contentious industry LNP meetings.⁷⁵ The NANC also favored Lockheed's proposed use of automated on-line access systems for entry, validation, tracking, and management for all application processing and Lockheed's proposed forecasting model to assist the industry in Central Office Code Utilization Surveys (COCUS) and NPA relief timing.⁷⁶ The NANC noted that the Lockheed proposal contained a state-of-the-art computer system with advanced security and disaster recovery to assure reliability in its database management. Further, NANC stated that Lockheed displayed database management experience and expressed a willingness to identify to the NANC any abuses in assignment processes.⁷⁷

26. Regarding price, NANC noted that Lockheed's overall proposed price for the five-year term as NANPA was half of Mitretek's.⁷⁸ NANC stated that Lockheed had indicated its willingness to consider distributing personnel performing NPA relief planning and CO code administration across three existing Lockheed locations (East coast, West coast and Mid-west locations) without any increase to its price.⁷⁹ On the transfer of intellectual property, the NANC reported that, at the May 14, 1997 NANC meeting, Lockheed committed to providing intellectual property rights for certain systems, software, and support documentation specifically developed to support NANPA functions.⁸⁰

27. The NANC found the strengths of Mitretek's proposal to be: (1) Mitretek's detailed analysis and understanding of the requirements the NANPA must meet; (2) the numbering expertise of the staff recently acquired by Mitretek; (3) Mitretek's willingness to make available all intellectual property rights to any successor; and (4) Mitretek's participation in recent INC and NANPA Working Group activities.⁸¹ The NANC raised concerns regarding Mitretek's

⁷³ *Id.* at 5.

⁷⁴ *Id.* at 6.

⁷⁵ *Id.*

⁷⁶ *Id.* at 7.

⁷⁷ *Id.*

⁷⁸ *Id.* at 8.

⁷⁹ *Id.*

⁸⁰ *Id.*

⁸¹ *Id.* at 9.

higher price, which reflected Mitretek's larger staff in comparison to other respondents' proposals, and about Mitretek's lack of corporate experience related to number administration.⁸²

28. Mitretek proposed to distribute its CO code administration and NPA relief planning staff in five locations across the country, with at least one NANPA presence in each time zone.⁸³ NANC noted that Mitretek would be performing only NANP administration and no other numbering administration, so Mitretek's selection as NANPA would assure another supplier of numbering administration services, enhancing vendor diversity and a competitive market for such services in the future.⁸⁴ In reviewing Mitretek's proposed organizational structure, NANC stated that Mitretek's proposed decentralized structure for CO code administration and NPA relief planning would enhance Mitretek's ability to attract experienced personnel and to acquire understanding of local numbering needs and issues.⁸⁵ The NANC stated, however, that decentralization could undermine consistency in applying industry numbering guidelines among the different central office code administration centers.⁸⁶ The NANC reported that it did not reach consensus that a decentralized organizational structure is necessary to perform NPA relief planning and CO code administration functions.⁸⁷

29. In the NANC's view, Mitretek's proposed staffing would assure meeting of the industry's demands for CO code administration and NPA relief planning.⁸⁸ The NANC noted that Mitretek had already hired industry numbering experts to help prepare the Mitretek proposal.⁸⁹ The NANC stated, however, that Mitretek's staffing could be excessive, and thus could impose unnecessary costs on the industry.⁹⁰ The NANC expressed concern that the total cost of the Mitretek proposal is \$22.5 million higher than Lockheed's over the five-year term as NANPA.⁹¹ The NANC also stated that Mitretek's proposal may have been influenced by industry experience in California and that that experience may have led Mitretek to overestimate the required

⁸² *Id.*

⁸³ Mitretek comments at Attachment B.

⁸⁴ NANC Recommendation at 9.

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.* at 11. The price associated with the Mitretek proposal was the NANC's primary concern. *Id.* at 12.

resources.⁹² The NANC further noted that Mitretek proposed a mechanized CO code administration tool, a forward-looking forecasting tool, a future on-line access capability for CO code application and a proposed procedure for resolving code conflict problems. Mitretek had also proposed the use of state-of-the-art computer and communications systems and software, and had established a Mitretek NANPA internet site.⁹³ Finally, NANC observed that Mitretek's attendance at recent INC meetings had given it awareness of current numbering issues, and had demonstrated a willingness to work with the industry and make changes based on industry preferences and concerns.⁹⁴

30. Regarding intellectual property rights, the NANC stated that Mitretek would make available to the NANC all systems and software upon the former's termination as NANPA.⁹⁵ Mitretek enumerated two ways it could allow this transfer, at Mitretek's option: (1) by transferring all systems, software, documents and data to the NANC or another NANC-designated organization; or (2) by issuing a no-cost, non-exclusive license for the systems, software, documents and data. Mitretek stated that the transfer would involve no cost to the NANC, or to any other designated organization that might serve as the future NANPA.⁹⁶

31. NANC eliminated Bellcore and CCMI from consideration for the NANPA. NANC considered Bellcore's description of systems, models, and options that might be applicable to current and future needs less innovative than those presented in other proposals.⁹⁷ In addition, the NANC expressed concern that Bellcore's proposal for NANPA, Inc. to use personnel from Bellcore's Numbering Strategies Organization for consulting and technical support would create potential for undue influence by one particular industry segment.⁹⁸ Finally, the NANC stated that Bellcore's proposal to centralize CO code administration but distribute NPA relief planning would

⁹² *Id.* at 11. In Mitretek's comments, it noted that the consensus position of industry and state government groups commenting before the California Public Utilities Commission estimated that nine staff were required to perform the NPA relief planning and Central Office Code Utilization Survey (COCUS) analysis function in California alone. Mitretek comments at 17.

⁹³ NANC Recommendation at 10.

⁹⁴ *Id.*

⁹⁵ *Id.* at 11.

⁹⁶ *Id.*

⁹⁷ *Id.*

⁹⁸ *Id.* Bellcore's proposed compliance with the neutrality requirements is based on its sale to SAIC and the establishment of a separate subsidiary, NANPA, Inc., to oversee NANPA operations.

minimize synergies that might otherwise be obtained.⁹⁹ There was general agreement among NANC members that the CCMI proposal was not as strong as other proposals.¹⁰⁰

(2) Billing and Collection Agent

32. The B&C Agent's primary function will be to calculate, assess, bill, and collect payments for numbering administration functions and distribute funds to NANPA on a monthly basis.¹⁰¹ In its recommendation, the NANC stated that, subject to a specific condition designed to assure neutrality, it recommends that NECA be the B&C Agent for three major reasons. First, the NANC stated, NECA has cost recovery expertise. NECA is the current administrator of the Telecommunications Relay Services (TRS) fund, and the recommended cost recovery mechanism¹⁰² mirrors the TRS model, which requires that every carrier providing interstate telecommunications services shall contribute to the TRS fund on the basis of its relative share of gross interstate revenues. NANC concluded this experience makes NECA qualified to manage NANPA cost recovery.¹⁰³ Second, NECA has experience in telephone industry billing and a long relationship with U.S. telecommunications carriers, again gained through its experience with the TRS fund.¹⁰⁴ Third, NECA's proposed price was one-third less than that of another finalist with equal staffing levels.¹⁰⁵

33. NANC's recommended cure to assure the B&C Agent's neutrality is that the Commission order NECA to create an independent board of directors exclusively for the B&C Agent.¹⁰⁶ The NANC recommends that the B&C Agent Board have broad-based representation from telecommunications service providers that use the NANP, and that the Board have at least

⁹⁹ *Id.* at 16.

¹⁰⁰ *Id.* The NANC stated that CCMI lacked expertise on complex numbering administration activities.

¹⁰¹ The B&C Agent shall also: (1) design a standard Reporting Worksheet to collect information for assessment calculations from carriers and distribute it to carriers and other NANP nations; (2) keep confidential all data obtained from carriers and not disclose such data in company-specific form unless authorized by the Commission; (3) develop procedures to monitor industry compliance with reporting requirements and propose specific procedures to address reporting failures and late payments; (4) file annual reports with the appropriate regulatory authorities of the NANP member countries as requested; and (5) obtain an annual audit from an independent auditor and submit the audit report to the Commission for appropriate review and action. See 47 C.F.R. § 52.16.

¹⁰² 47 C.F.R. § 52.17 provides that all telecommunications carriers in the United States shall contribute on a competitively neutral basis to meet the costs of establishing numbering administration. For each telecommunications carrier, such contributions shall be based on the gross revenues from the provision of its telecommunications services.

¹⁰³ NANC Recommendation at 12.

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.* at 13.

one non-United States representative.¹⁰⁷ The NANC found NECA's proposal to place the NANPA B&C Agent responsibilities under the Universal Service Administrative Company (USAC)¹⁰⁸ to be insufficient to address parties' concerns about NECA's neutrality.¹⁰⁹ The NANC notes that, in its May 2, 1997 presentation, NECA stated that it would be responsive to a specific request by the Commission for a separate B&C Agent Board. Consistent with CC Docket No. 96-45 and CC Docket No. 97-21,¹¹⁰ the NANC recommends that the B&C Agent Board: (1) be neutral and impartial; (2) not advocate specific positions to the Commission in proceedings unrelated to numbering administration; (3) not be aligned with a particular industry segment; and (4) not have a direct financial interest in support mechanisms established by the Commission.¹¹¹

34. In spite of its support of NECA, the NANC had several concerns related to NECA's selection. Those concerns were: (1) NECA's lack of international experience; (2) NECA's unwillingness to handle shortfalls in collections; (3) a lack of diversity resulting from one organization collecting funds for various purposes, including Universal Service, TRS, and NANPA; and (4) NECA's failure to include non-routine reports, testimony and litigation in its firm price quote.¹¹²

35. NANC recommended Lockheed as the alternate B&C Agent, noting that Lockheed did not bid to perform B&C functions as a separate function, but instead made its performance of those functions dependent upon its selection as the NANPA.¹¹³ The NANC recommended Lockheed as the alternate because Lockheed: (1) has the resources to handle shortfalls in collections; (2) has expertise in billing and collections; (3) has international experience and experience handling foreign currencies; and (4) is completely neutral.¹¹⁴ The NANC stated that Lockheed was not the first choice for the NANPA B&C Agent primarily

¹⁰⁷ *Id.*

¹⁰⁸ NECA Proposal at 9. The USAC will administer the universal service support mechanisms for high cost areas and low-income consumers, as well as perform billing and collection functions associated with the universal support mechanisms for schools and libraries and rural health care providers. Board on Universal Service, CC Docket Nos. 97-21 and 96-45, *Report and Order and Second Order on Reconsideration*, FCC 97-253 (rel. July 18, 1997) at para. 5.

¹⁰⁹ NANC Recommendation at 13.

¹¹⁰ Federal-State Joint Board on Universal Service, *First Report and Order*, CC Docket No. 96-45, FCC 97-157 (rel. May 8, 1996); Changes to the Board of Directors of the National Exchange Carriers Association, Inc. and Federal-State Joint Board on Universal Service, *Report and Order and Second Order on Reconsideration*, CC Docket No. 97-21 and CC Docket No. 96-45, FCC 97-253 (rel. July 18, 1997).

¹¹¹ NANC Recommendation at 13.

¹¹² *Id.* at 13-14.

¹¹³ *Id.* at 14.

¹¹⁴ *Id.*

because of its higher cost to perform the B&C functions with equivalent staffing.¹¹⁵ Also, NANC noted that Lockheed's experience in billing and collection services is not specific to the telecommunications industry, and that Lockheed, unlike NECA, does not have established relationships with U.S. telecommunications carriers.¹¹⁶

c. Positions of the Parties

(1) Comments on NANPA

36. To commenters that support Lockheed, Lockheed's chief advantages over Mitretek are as follows: (1) Lockheed's price was half as much as Mitretek's; (2) Lockheed possesses numbering experience associated with local number portability and administration of the SMS/800 Help Desk; (3) Lockheed has the potential to achieve synergy from future consolidation of numbering administration systems associated with Lockheed's number portability involvement; and (4) Lockheed's centralized approach to CO code administration could achieve cost savings and overhead efficiencies.¹¹⁷ MCI opposes paying more for NANPA than is necessary, and notes that it alone would pay approximately \$1.5 million more if Mitretek were selected.¹¹⁸

37. For those that prefer Mitretek, Lockheed's chief disadvantages are: (1) its proposed staffing levels; (2) its centralization; (3) its initial unwillingness to transfer intellectual property upon termination of its tenure as NANPA; (4) the lack of vendor diversity; and (5) its estimation of costs. These commenters include: AirTouch; the California Public Utilities Commission (CaPUC); CTIA; PCIA; and SBC.¹¹⁹ The NANC's lack of consensus on a

¹¹⁵ *Id.* at 15.

¹¹⁶ *Id.*

¹¹⁷ MCI comments at 9-10. *See also* NEXTLINK reply comments at 1-2; GTE reply comments at 3; Lockheed reply comments at 11; WinStar reply comments at 4. NEXTLINK asserts that, by serving as both the NANPA and the NPAC, Lockheed will be able to develop new approaches and technologies using number portability to improve number conservation and limit attempts by incumbent carriers to use numbering problems for competitive advantage. NEXTLINK reply comments at 2.

¹¹⁸ MCI comments at 11, reply comments at 7.

¹¹⁹ PCIA, however, after filing its comments and reply comments in this proceeding, amended its position to support the NANC recommendation of Lockheed as the new NANPA. *See* Letter from Mark J. Golden, PCIA, to Chairman Reed Hundt dated August 18, 1997 (PCIA August 18 ex parte). Both AT&T and WorldCom state that they would prefer Mitretek to be the NANP administrator, but that they do not object to the selection of Lockheed. AT&T comments at 2; WorldCom comments at 2; AT&T reply comments at 2; WorldCom reply comments at 1.

recommendation for NANPA concerns some commenters, who argue that the Commission is not bound by the recommendation and must make an independent decision.¹²⁰

38. Staffing Levels. Some commenters assert that Lockheed's proposal is deficient and will result in unacceptable delays in completion of code assignments, NPA relief, and other numbering administration tasks.¹²¹ AirTouch states that Lockheed assumes an average of 10,000 central office code opening requests per year, between 30-40 NPAs requiring relief, and an average of 12 meetings per NPA relief, yet only proposes a staff of eleven persons.¹²² The CaPUC notes that the Evaluation Team stated that Lockheed's proposal appeared to rely on mechanized systems and processes instead of personnel, and that Lockheed may lack the staff necessary to address numbering issues requiring human intervention and judgment.¹²³ CTIA notes that the NANPA will implement "jeopardy" and conservation procedures for NPAs that need relief, will handle area code relief that is already underway, and will process a growing number of CO code applications.¹²⁴ CTIA argues that Mitretek's proposal will assure that the industry's numbering administration demands will be met.¹²⁵ Similarly, Omnipoint notes that the NANPA's role is likely to grow more challenging as the problems of number exhaust increase and more new entrants come into the market, and expresses concern that Lockheed's proposed staff is

¹²⁰ AirTouch comments at 3-5. *See also* CVS comments at 1 (because of the lack of consensus on the NANC, the Commission must now review NANPA submissions *de novo* and select an administrator in a public manner or proceeding); Mitretek comments at 3; SBC comments at 5; WorldCom comments at 2-3; PCIA reply comments at 2. While there is no legal definition of consensus, other industry fora consider consensus to be established when "substantial agreement" has been reached among interest groups participating. Substantial agreement means more than a majority, but not necessarily unanimity. *See* § 6.7.7, Principles and Procedures of the Carrier Liaison Committee.

¹²¹ AirTouch comments at 7; CTIA comments at 2; PCIA comments at 3-4; SBC comments at 6-9; WorldCom comments at 3-4; AT&T reply comments at 3; CaPUC reply comments at 2; SBC reply comments at 2-3. *See also* Mitretek comments at 17-18; reply comments at 2-3.

¹²² AirTouch comments at 7.

¹²³ CaPUC comments at 2. *See also* Omnipoint comments at 3; SBC comments at 7; CaPUC reply comments at 2. The CaPUC is also concerned that the NANC did not properly consider the NPA/NXX exhaust situation in California, which depletes NPAs and NXXs faster than any other jurisdiction participating in the NANP, and thus views an adequate NANPA staff as crucial. CaPUC Comments at 3-4. The CaPUC argues that, at a minimum, Lockheed must justify how its proposed staffing level could accommodate the growth in numbering and code administration activities. CaPUC reply comments at 3.

¹²⁴ CTIA comments at 3-4.

¹²⁵ *Id.* at 2. *See also* PCIA comments at 4-5 (suggesting that the Commission could state that, if Mitretek's proposed level of staffing is not required after a certain time period, the staff will be reduced and the savings returned in the form of reduced costs).

inadequate to respond effectively to the workload.¹²⁶ SBC asserts that Lockheed has not secured an experienced industry team to perform complex NANPA functions.¹²⁷

39. Mitretek states that the differences in the proposed staff levels between Mitretek and Lockheed result from significant differences in the assumed number of NPAs requiring relief and the assumed workload associated with critical functions required of the CO code administrator.¹²⁸ According to Mitretek, the differences in the number of NPA relief activities assumed by the respondents are evidence of the potential ambiguity in and misunderstanding of the stated requirements.¹²⁹ In Mitretek's view, the Central Office Code Utilization Study (COCUS) forecast and history are better indicators of future activity than the Requirements Document, and the recent COCUS forecasts and history indicate an unexpected level of NPA relief planning activity greater than that indicated in the Requirements Document.¹³⁰ Mitretek adds that technology and market factors will continue to increase the number of NPAs in relief planning and a decrease during the five year NANPA term is unlikely.¹³¹

40. Mitretek also alleges that the differences in the proposed staff levels between Mitretek and Lockheed result from significant differences in the staff time each assumed would be required to perform key CO code administration and NPA relief planning functions. Mitretek projected that two hours of staff time would be required per CO code assignment, while Lockheed projected that one hour of staff time would be sufficient.¹³² Mitretek projected that approximately four staff per NPA in relief planning per year would be needed, while Lockheed assumed that one staff member could handle seven NPAs in relief planning per year.¹³³

¹²⁶ Omnipoint comments at 3.

¹²⁷ SBC comments at 7.

¹²⁸ Mitretek comments at 5. *See also* PCIA reply comments at 3. Mitretek assumed that there would be 3,265 CO code requests in Year 1, 8,799 CO code requests in Year 2, and 9,336 in Years 3, 4, and 5. Mitretek assumed that there would be 71 NPA relief activities underway per year. Regarding relief planning meetings, it assumed that there would be 51 in Year 1, 43 in Year 2, 33 in Year 3, 46 in Year 4, and 22 in Year 5. In contrast, Lockheed assumed that there would be an average of 10,000 CO code requests per year, that 30-40 NPAs would require relief in each year over the five-year period, and that each NPA relief activity would require an average of 12 meetings. *See* NANC Recommendation, Attachment 4.

¹²⁹ Mitretek comments at 5.

¹³⁰ *Id.* at 6-7.

¹³¹ *Id.* at 9.

¹³² *Id.* at 15.

¹³³ *Id.* at 16.

41. Neutrality. On September 4, 1997, Mitretek filed an ex parte letter regarding Lockheed's compliance with the neutrality requirements for the NANPA.¹³⁴ Mitretek states that Lockheed Martin IMS is a wholly-owned subsidiary, and hence an affiliate as defined in the Communications Act, of the Lockheed Martin Corporation. Mitretek further states that the Lockheed Martin Corporation and its affiliates currently offer and have received licenses to provide telecommunications services. Specifically, Mitretek alleges that the relationships between the Lockheed Martin Corporation, Lockheed Martin IMS, and the affiliates known as Lockheed Martin Telecommunications, Lockheed Martin Intersputnik,¹³⁵ Loral Space and Communications, and Globalstar violate, or in the future could violate, the neutrality requirements.¹³⁶ Mitretek states that, given the importance of the neutrality of the NANPA, it is appropriate for the Commission to determine whether or not Lockheed Martin Corporation and its affiliates are telecommunications services providers.¹³⁷

42. Lockheed responded to the Mitretek ex parte letter on September 11, 1997.¹³⁸ Lockheed states that it is in compliance with the NANC's neutrality criteria and will continue to comply with those requirements during its term as the NANPA.¹³⁹ Lockheed asserts that the NANC's neutrality criteria confirm the Commission's view that the NANPA must not represent, or be unduly influenced by, any segment of the industry that will use NANP numbering resources. Lockheed notes that the NANC neutrality criteria provide that the NANPA may not be an affiliate of any telecommunications service provider as defined in the Communications Act of 1934, as amended by the Telecommunications Act of 1996. In other words, the NANPA may not be an affiliate of an entity that provides telecommunications "for a fee directly to the public,"¹⁴⁰ and therefore requires allocations of NANPA-distributed numbering resources.¹⁴¹

¹³⁴ Letter from Dr. H. Gilbert Miller, Mitretek, to William F. Caton dated September 4, 1997 (Mitretek September 4 ex parte).

¹³⁵ WorldCom also states that Lockheed's recent venture into telecommunications service provision with Intersputnik should be examined, and that the Commission should make clear that if the joint venture in the future chooses to serve North America for any type of data, telecommunications or cable television service, Lockheed immediately would lose its competitively neutral status and its position as NANPA. WorldCom reply comments at 5.

¹³⁶ Mitretek September 4 ex parte at 1.

¹³⁷ *Id.* at 2. The Act defines telecommunications services as "the offering of telecommunications for a fee directly to the public, or to such classes of users as to be effectively available directly to the public, regardless of the facilities used." 47 U.S.C. § 153(46).

¹³⁸ Letter from Cheryl A. Tritt, Counsel for Lockheed Martin IMS, to William F. Caton dated September 11, 1997 (Lockheed September 11 ex parte).

¹³⁹ Lockheed September 11 ex parte at 1.

¹⁴⁰ 47 U.S.C. § 153(46).

¹⁴¹ Lockheed September 11 ex parte at 2.

Lockheed states that the business relationships described in Mitretek's letter are with entities that will not use numbering resources and are not classifiable as telecommunications service providers under the Act.¹⁴² Lockheed specifically states that Globalstar, Astrolink, and Loral SKYNET meet the requirements of competitive neutrality.¹⁴³

43. According to Lockheed, Loral SKYNET¹⁴⁴ does not and will not use NANP resources and does not provide "telecommunications services" as defined in the Act.¹⁴⁵ Lockheed argues that, therefore, Loral SKYNET cannot be classified as a "telecommunications service provider" under the Act or the neutrality criteria.¹⁴⁶ In order to be so classified, Lockheed asserts, Loral SKYNET must: (1) provide services to the public, or to such classes of users as may be equivalent to public availability; and (2) provide its services to the public directly, rather than through intermediate customers.¹⁴⁷ Lockheed states that the first requirement is not met where, as in the case of Loral SKYNET, a provider offers service only to a restricted class of non-end user customers.¹⁴⁸ In Lockheed's view, Loral SKYNET'S highly restricted scope of service is subject to the analysis applied in the 1996 cable landing licensing decision in the *AT&T Submarine Systems, Inc. Applications Proceeding*.¹⁴⁹ Lockheed states that, in that proceeding, the Commission's International Bureau reasoned that, in deciding whether a service is effectively available directly to the public, and therefore is a telecommunications service under the Act, "the

¹⁴² Lockheed September 11 ex parte at 3.

¹⁴³ *Id.* at 3.

¹⁴⁴ According to Lockheed, Loral SKYNET is an indirect, wholly-owned subsidiary of Loral Space and Communications Ltd. (Loral Space) through three intervening subsidiaries. The Lockheed Martin Corporation received a preferred stock position as a result of the January 1996 acquisition of Loral's defense electronics operations. Lockheed states that when the Lockheed Martin Corporation acquired an interest in Loral Space, its interest represented 20% of Loral Space's shares on a fully diluted basis. As of September 1, 1997, the Lockheed Martin Corporation's interest represents approximately 16% of Loral Space's shares on a fully diluted basis. *Id.* at n.11.

¹⁴⁵ *Id.*

¹⁴⁶ *Id.* at 4.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.* Lockheed states that the bulk of Loral SKYNET space segment is leased for video distribution service to a small group of broadcasters, cable operators, and other video providers. Loral SKYNET also provides space segment to AT&T and GCI who use it for system redundancy and to fulfill certain government contracts. In addition, Lockheed states, Loral SKYNET leases space segment to GE Tridom, which, in turn, provides VSAT services to corporate customers. Lockheed states that Loral SKYNET has no ground facilities or switches through which it can connect with the public switched telephone network and offer service directly to the public. Further, Loral SKYNET customers also must provide their own equipment.

¹⁴⁹ AT&T Submarine Systems, Inc. Application for a License to Land and Operate a Digital Submarine Cable System Between St. Thomas and St. Croix in the U.S. Virgin Islands, *Cable Landing License*, 11 FCC Rcd 14884 (Int'l. Bur. 1996) (*AT&T-SSI*).

type, nature, and scope of users for whom the service is "intended and whether it is available to a significant restricted class of users" must be determined.¹⁵⁰ Lockheed contends that the International Bureau determined that AT&T-SSI's service would not be effectively available directly to the public because AT&T-SSI proposed to make available "bulk capacity in its system to a significantly restricted class of users, including common carrier cable consortia, common carriers, and large businesses."¹⁵¹

44. Lockheed further claims that services that are offered to a broad base of public end users, such as dialtone and long distance services, are easily distinguished from services that are offered only to carriers and other intermediaries that stand between the provider of the service and the ultimate user.¹⁵² In order to offer a telecommunications service under the Act, an entity must itself offer service to the public, Lockheed argues, and Loral SKYNET does not offer any service of this kind.¹⁵³

45. Regarding Globalstar,¹⁵⁴ Lockheed asserts that Globalstar will provide mobile service, data, facsimile, position location and other mobile satellite services through distributors for both domestic and international subscribers.¹⁵⁵ Lockheed states that the Commission has specifically found that Globalstar will not provide telecommunications services and thus will not be classified as a telecommunications carrier.¹⁵⁶ Therefore, Globalstar's services do not qualify as telecommunications services under the Act and Globalstar should not be deemed a telecommunications service provider for purposes of the neutrality requirements.¹⁵⁷ Similarly, Lockheed states that Astrolink¹⁵⁸ intends to provide advanced broadband communications services to businesses and consumers on a worldwide basis.¹⁵⁹ In authorizing the construction,

¹⁵⁰ Lockheed September 11 ex parte at 4-5.

¹⁵¹ *Id.* at 5.

¹⁵² *Id.*

¹⁵³ *Id.* at 6.

¹⁵⁴ The Lockheed Martin Corporation has a 16 percent interest in Loral Space, which has a 38 percent interest in Globalstar. *Id.* at n.21.

¹⁵⁵ Lockheed September 11 ex parte at 6.

¹⁵⁶ *Id.*, citing Application of Loral/Qualcomm Partnership, L.P. For Authority to Construct, Launch, and Operate Globalstar, a Low Earth Orbit Satellite System to Provide Mobile Satellite Services in the 1610-1626.5 MHz/2483.5-2500 MHz Bands, 10 FCC Rcd 2333, 2336 (Int'l. Bur. 1995) *aff'd*, 11 FCC Rcd 18502 (1996).

¹⁵⁷ *Id.*

¹⁵⁸ Astrolink is part of Lockheed Martin Telecommunications, which is a subsidiary of the Lockheed Martin Corporation.

¹⁵⁹ Lockheed September 11 ex parte at 7.